



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA VA 22314

MAILED

AUG 19 2011

OFFICE OF PETITIONS

In re Patent of Arkinstall et al. : DECISION ON REQUEST
Patent No. 7,432,286 : FOR
Issue Date: October 7, 2008 : RECONSIDERATION OF
Application No. 10/088,074 : PATENT TERM ADJUSTMENT
Filed: October 13, 2004 : and
Atty Docket No. 220243US : NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on December 1, 2008, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by nine hundred twenty-two (922) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by nine hundred twenty-two (922) days is **GRANTED to the extent indicated herein.**

Patentees are informed that the Three Year Delay period is triggered by the application's commencement date, not the 371 fulfillment date. The commencement date is 30 months from the priority date claimed in the international application, or earlier. The priority date claimed in the international application is September 28, 1999. While early processing was requested, requirements were not met. Thirty months from the priority date is March 28, 2002, which is the date of commencement. Accordingly, the period of adjustment under § 1.702(b) is 1289 days, counting the number of days beginning on the day after three years after the application's commencement date, March 29, 2005, and ending on October 7,

2008, when the patent issued. The maximum Three Year Delay period is 1289 days, not 360 days as patentees assert. There are 601 days overlapping with the A delay period, not 39 days as patentees assert.

As such, the patent term adjustment is one thousand two hundred eighty-nine (1289) days. The calculation is as follows: 601 days of A delay + 1289 days of B delay - 601 days of overlap - 0 days of Applicant delay.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under 37 CFR 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The \$200.00 fee set forth in 37 CFR 1.18(e) will be charged to patentees' deposit account. This fee is required and will not be refunded. No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand two hundred eighty-nine (1289) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3230.



Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,432,286 B1

DATED : October 7, 2008

DRAFT

INVENTOR(S) : Arkinstall et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 601 days

Delete the phrase "by 601 days" and insert – by 1289 days--